UNITED PLANTATIONS BHD v. MAJLIS DAERAH SABAK BERNAM

HIGH COURT MALAYA, SHAH ALAM
MOHD YAZID MUSTAFA J
[ORIGINATING MOTION NO: 25-52-11-2014]
4 JULY 2017

LOCAL GOVERNMENT: *Rates – Assessment – Valuation of annual value of holding – Originating motion seeking declaration that annual rate imposed null and void – Whether respondent rendered services to appellant – Whether appellant benefited from respondent's services – Whether appellant had duty to pay valuation rate – Whether valuation rate valid in law – Local Government Act 1976, ss. 130(1) & 146*

In November 2014, the appellant filed an originating motion pursuant to s. 145 of the Local Government Act 1976 ('LGA') seeking a declaration that the annual value of the appellant's holding at RM168,000 and the annual rate imposed at RM16,800 by the respondent *vide* letter dated 17 November 2014 were null and void. Further, the appellant contended that it was not liable to pay the annual rate because at all material times the respondent never provided any services to the said holding. The issue that arose for determination were (i) whether the annual value of RM168,000 was valid; (ii) whether the annual rate of RM16,800 imposed on the appellant's holding appropriate and enforceable; (iv) to determine the annual rate, was it necessary for the court to consider the land use category; and (v) whether the appellant should pay the annual rate despite no services being rendered by the respondent.

Held (dismissing originating motion):

(1) The respondent had adduced a valuation report to justify the annual rate imposed. Further, on the allegation of failure on the part of the respondent to engage the services of Jabatan Penilaian dan Perkhidmatan Harta Kerajaan to obtain the valuation was not grave and fatal as nowhere in the LGA was it stated that JPPH valuation ought to be used to ascertain the annual rate. Therefore, the respondent had duly complied with s. 130(1) of the LGA in the determination of the annual value of the appellant's holding which was RM168,000. (paras 16-18)

(2) It was not a disputed fact that the appellant's holding was largely in the State of Perak but the rateable tax was only confined to the holding of 345 hectares which was situated within the area under the respondent's jurisdiction. Once it was established that the appellant's holdings was situated within the jurisdiction of the respondent's authority, the rate imposed shall be paid by the appellant by virtue of s. 146. Any failure or refusal to pay the annual rate as imposed by the appellant shall be

recovered in the manner prescribed under the LGA. Therefore, the notice dated 17 November 2014 by the respondent in fixing and maintaining the annual value of the appellant's holding at RM168,000 was valid in law. (paras 22-24)

(3) There was no difference between an ordinary agricultural land and an estate land. Under s. 214A(1) of the National Land Code, an estate is an agriculture land under one title or more with a holding of a minimum of 40 hectares. The final output of the activities of that holding could be business in nature but the category of land use of this holding was agriculture. Based on the finding that the land use category was agriculture, the respondent had no authority to impose the rate of 10% which was meant for industrial land use. Therefore, the annual value of RM168,000 was appropriate whereas the annual rate should be at the rate of 2.5% of the annual value instead of the 10% that being imposed. (paras 35-37)

Case(s) referred to:

Generation Products Sdn Bhd v. Majlis Perbandaran Klang [2008] 5 CLJ 417 FC ***(refd)***

Majlis Perbandaran Subang Jaya v. The Alice Smith Schools Association [2012] 9 CLJ 977 FC ***(refd)***

PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 FC ***(refd)***

Legislation referred to:

Local Government Act 1976, ss. 2, 39, 63, 72, 127, 130(1), 134, 145, 146

National Land Code, s. 214A(1)

For the appellant - Anand Raj, Foong Pui Chi & Jess Ngo Hui Zhong; M/s Shearn Delamore & Co

For the respondent - Farah Nur Atiqah Bahari; M/s Nazrin Nasir T Anand & Co

Reported by Sandra Gabriel

JUDGMENT

Mohd Yazid Mustafa J:

[1] In November 2014, United Plantations Berhad ("the appellant") filed an originating motion pursuant to s. 145 of the Local Government Act 1976 ("LGA") seeking declaration that the annual value of the appellant's holding at RM168,000 and the annual rate imposed at RM16,800 by the respondent *vide* letter dated 17 November 2014 are null and void.

[2] The court held that the annual value of the appellant's holding of RM168,000 is valid. However, the annual rate imposed must be based on the land use category, hence the court finds that the land use category of the appellant's holding is agriculture therefore the appropriate annual rate shall be 2.5%.

[3] The appellant appealed and the respondent cross-appealed against the said decision. A

[4] Based on the submissions of the parties, there are several issues as follows:

(i) Whether the annual value of RM168,000 is valid? B

(ii) Whether the annual rate of RM16,800 imposed on the appellant's holding is appropriate and enforceable?

(iii) To determine the annual rate, is it necessary for the court to consider the land use category? C

(iv) Whether the appellant shall pay the annual rate despite no services rendered by the respondent?

[5] The appellant's counsel had invited this court to consider several points of law on the statutory interpretation of the relevant section of LGA, as adopted in the area of revenue law, tax and rate cases. D

[6] It is well-established principle of statutory interpretation that when the words in a statute have not acquired technical meaning, the natural and ordinary meaning of the words should be given effect to. This principle has been well enunciated by Justice Steve Shim in the case of *PP v. Tatt Eek & Other Appeals* [2005] 1 CLJ 713: E

> The primary duty of the court is to give effect to the intention of the Legislature in the words used by it. It is a well-established canon of interpretation that the intend of the Legislature is to be gathered from the words used and that if the words used have not acquired any technical, meaning, they should be deemed to have been used in their ordinary meaning. If the words of the statute are in themselves precise and unambiguous, then no more is necessary than to expound those words in their natural and ordinary sense. The words themselves alone in such cases best declare the intent of the lawgiver. F

[7] I find the relevant provisions of LGA applicable to this particular case do not require technical meaning as the words are easily to be understood and interpreted. The relevant provisions of the LGA will be dealt with below. G

[8] The lengthy submission of the appellant's counsel on the interpretation of relevant provisions of LGA corresponding with those interpretations adopted under revenue law, tax and rate cases with the supporting authorities thereto bears no relevance to the subject matter of this case. H

[9] To appreciate the issues in this case, it is of paramount importance to understand the powers, limitations, functions, duties, roles and responsibilities of a local authority as provided under the LGA. I

A **[10]** A local authority has to perform the duties and exercise the powers specified in the Act, among others, s. 63 of the LGA provides that it shall have the general control and care of all places within the local authority area which has been or shall be at any time set apart and vested in the council for the use of the public or to which shall at any time have acquired a
B common right. It may erect and maintain public amenities.

[11] Section 72 of the LGA provides certain powers to a local authority in relation to sanitation, the erections and managing markets, lodging houses, stalls, public lavatory and abattoirs. It also has the power to safeguard and promote public health for example to take all necessary and reasonably
C practical measures for preventing the occurrence of any infectious communicable or preventable diseases.

[12] To carry out its duties and to provide all the public amenities, the local council requires revenue.

D **[13]** Section 39 of the LGA states that the revenue of a local authority shall consist of all taxes, rates, rents, licenses, fees, dues and other sums or charges payable to the local authority by virtue of the provision or any other written law. Thus, one of the principal sources of income of the local authority is imposition of annual rate.

E **[14]** However, there are provisions in the LGA which exempt payment of any rates, as provided under s. 134, that are not for pecuniary profit such as:

(a) public places for religious worship;

(b) licensed public burial grounds or crematoria;

F (c) public schools;

(d) public places for charitable purposes;

(e) places for the purposes of science, literature or fine arts;

G **[15]** Firstly, s. 130(1) of the LGA stipulates that the State Authority is vested with the power to determine the annual value of the respondent's holding.

[16] Based on the affidavit evidence, I find that the respondent has adduced a valuation report to justify the annual rate imposed in this case.

H **[17]** Further, on the allegation of failure on the part of the respondent (Majlis) to engage the services of Jabatan Penilaian dan Perkhidmatan Harta Kerajaan ("JPPH") to obtain the valuation is not grave and fatal as nowhere in the LGA it is stated that JPPH valuation ought to be used to ascertain the annual rate (see case of *Majlis Perbandaran Subang Jaya v. The Alice Smith*
I *Schools Association* [2012] 9 CLJ 977).

[18] Therefore, the respondent has duly complied with s. 130(1) of the LGA in the determination of the annual value of the appellant's holding which is RM168,000.

[19] On the issue of annual rate, I find that s. 127 of the LGA clearly gives power to the respondent to impose the annual rate or rates within a local authority with the approval of the State Authority. Section 127 reads as follows:

> 127. Power to impose rates.
>
> The local authority may, with the approval of the State Authority, from time to time as is deemed necessary, impose either separately or as a consolidated rate, the annual rate or rates within a local authority are for the purposes of this Act or for other purposes which it is the duty of the local authority to perform under any other written law.

[20] The local authority's power to impose the annual rate is further supported by the Federal Court decision as in *Generation Products Sdn Bhd v. Majlis Perbandaran Klang* [2008] 5 CLJ 417; [2008] 6 MLJ 325, held that "Section 127 is the provision that empowers the local authority to impose rates …"

[21] Section 127 of the LGA emphasises further that the local authority can only impose whatever rate on two conditions. Firstly, the holding is within the local authority area and secondly there is an approval by the State Authority to impose the rate.

[22] Although it is not a disputed fact that the appellant's holdings are largely in the State of Perak but the rateable tax is only confined to the holding of 345 hectares which is situated within the area under the respondent's jurisdiction.

[23] Once it is established that the appellant's holdings are situated within the jurisdiction of the respondent's authority, the rate imposed shall be paid by the appellant by virtue of s. 146. Therefore, any failure or refusal to pay the annual rate as imposed by the respondent shall be recovered in the manner prescribed under the LGA.

[24] Based on the above reasons, the notice dated 17 November 2014 by the respondent in fixing and maintaining the annual value of the appellant's holding at RM168,000 is valid in law.

[25] The crux of the matter is whether the appellant shall be liable to pay the annual rate of RM16,800, as imposed on the appellant's holding.

[26] The appellant contended that it is not liable to pay the annual rate because at all material times, the respondent never provided any services to the said holding.

[27] The purposes of local authority is to provide amenities for the benefit and use of public at large within its territory.

[28] I am of the view that the appellant does benefit from the amenities provided by the respondent such as the roads leading to the appellant's holding, bus terminal, burial ground for the workers of the appellant's holding, market and others. These are amongst the services rendered either directly or indirectly to the public which invariably benefits the appellant's holding.

[29] On the other hand, the appellant contended that it is not liable to pay the rate imposed because at all material time, it provided the services, facilities or amenities to its workers under its statutory obligations pursuant to the Workers' Minimum Standards of Housing and Amenities Act 1990. Counsel for the appellant further referred to the Hansard of the Dewan Rakyat which emphasised that the WMSHA 1990 is a piece of legislation which requires employers to provide various facilities and amenities for the welfare of its workers and their dependents. Therefore, they do not need to pay any rate to the respondent because all the services and welfare of the estate workers fall under appellant's obligation.

[30] The appellant's contention and reliance on WMSHA 1990 is misplaced because the facilities and amenities rendered by the respondent are to compliment and to provide access to those facilities provided by the appellant under WMSHA 1990.

[31] Further, the definition of "holding" under s. 2 of the LGA which means to include any land, therefore I am of the view that the appellant's holding will come within the meaning of any land under the definition of holding.

[32] Therefore, the contention of the appellant that its holding is not subject to annual rate is devoid of merit.

[33] On a separate note, the court earlier had inadvertently ruled the annual rate to be 2% of the annual value, which was in fact an old rate. However, having perused the affidavits again it is now realised that the appropriate annual rate for agricultural land should be 2.5% of the annual value, as stated in first schedule (jadual 1) in exh. MN5 of encl. 14.

[34] Based on the definition, it is an undisputed fact that the holding is an agriculture estate which is fully occupied with oil palm plantation consisting an area of 345 hectares. The rate of RM168,000 is based on the valuation report that forms the basis for respondent to fix the rateable amount.

[35] The appellant's holding is land planted with oil palm. The court finds that there is no difference between an ordinary agricultural land and an estate land. Under s. 214A(1) of National Land Code, an estate is an agriculture

land under one title or more with a holding a minimum 40 hectares. The final output of the activities of that holding can be business in nature but the category of land use of this holding is agriculture.

[36] Based on the finding that the land use category is agriculture, the respondent has no authority to impose the rate of 10% which is meant for industrial land use.

[37] Based on the above reasons, the court hold that the annual value of RM168,000 is appropriate whereas the annual rate should be at the rate of 2.5% of the annual value instead of the 10% that being imposed.